

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	CSR-7806-E
Time Warner Cable Inc.)	
)	
Petition for Determination of Effective)	
Competition in Various Franchise Areas in Ohio)	

MEMORANDUM OPINION AND ORDER

Adopted: May 29, 2008

Released: May 29, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc., hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.”¹ Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)² and the Commission’s implementing rules,³ and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petition is unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁵ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶ For the reasons set forth below, we grant the petition based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹Petitioner included the community Delta in the caption of its petition, but provided no information to support a determination that effective competition exists for this community. Accordingly, the petition is denied as to Delta without prejudice; Petitioner may file a petition including the necessary information for Delta.

²See 47 U.S.C. § 543(a)(1).

³47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

⁴47 C.F.R. § 76.906.

⁵See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁶See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁷ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁸

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁹ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.¹⁰ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹¹ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹² and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹³ Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹⁴ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁵ Petitioner sought to

⁷47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁸47 C.F.R. § 76.905(b)(2)(i).

⁹*See* Petition at 2-4.

¹⁰*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹¹47 C.F.R. § 76.905(e)(2).

¹²*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5-6.

¹³*See* Petition at 5.

¹⁴*See* Petition at 6.

¹⁵*Id.* at 6-7. In the Communities of Dunkirk, East Liberty (a/k/a Perry Township), Rushville, Thompson, Thorn, Trenton, and West Rushville, both the Time Warner Cable Inc. penetration figure and the aggregate DBS penetration figure clearly exceed 15 percent. Petitioner argues that it is subject to effective competition because in

(continued....)

determine the competing provider penetration in the Group B Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code plus four basis.¹⁶

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁷ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁸ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is satisfied as to the Group C Communities.

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addition to DBS penetration exceeding 15 percent of the occupied households, the number of Time Warner Cable Inc.’s subscribers also exceed 15 percent and the Commission has recognized that in such cases the second prong of the competing provider test is satisfied.

¹⁶Petition at 7-8.

¹⁷Petition at 8, n.25.

¹⁸47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition/s for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁹47 C.F.R. § 0.283.

ATTACHMENT A

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)
Ada	OH0085
Adamsville	OH2414
Alexander	OH1319
Alexandria	OH1378
Alger	OH0086
Ashley	OH1535
Ashville	OH0980
Athens	OH0029
Athens	OH2283
Baltimore	OH0847
Belle Center	OH1539
Bennington	OH1858
Berkshire	OH1687
Berne	OH0405
Bowling Green	OH2335
Bremen	OH0807
Brushcreek	OH2181
Bucyrus	OH0054
Bucyrus	OH0474
Burlington	OH2334
Cardington	OH0321
Cardington	OH2170
Cardington	OH2112
Carroll	OH1049
Centerburg	OH1379
Chesterville	OH2173
Circleville	OH0311
Circleville	OH0446
Claibourne	OH1222
Clearcreek	OH2282
Clinton	OH2317
Crestline	OH0032
Crooksville	OH0090
Croton	OH1758
Croton	OH2114
Danville	OH0091
Darby	OH2424
Darby	OH1240
Derby	OH0904
Delaware	OH0513
Delaware	OH0291
Dover	OH2288
Dover	OH1142

Dresden	OH0058
Dunkirk	OH1391
East Liberty	OH2165
Edison	OH0545
Etna	OH1380
Forest	OH1540
Fazeysburg	OH0204
Fredericktown	OH0092
Fulton	OH2172
Fultonham	OH1499
Galena	OH0672
Galion	OH0035
Gambier	OH1987
Gilead	OH2413
Gratit	OH1386
Green Camp	OH1488
Greenfield	OH0408
Groveport	OH0842
Hale	OH1558
Harbor Hills	OH2336
Harlem	OH1886
Harrisburg	OH0907
Harrison	OH1381
Harrison	OH0981
Hartford	OH1815
Hocking	OH0406
Howard	OH1985
Jackson	OH1070
Jackson	OH2401
Jackson	OH2770
Jefferson	OH0873
Jefferson	OH2404
Jerome	OH1143
Johnstown	OH0694
Junction	OH0649
Kingston	OH1885
Kirkersville	OH1191
La Rue	OH1541
Lancaster	OH0269
Liberty	OH0476
Liberty	OH1390
Liberty	OH2632
Liberty	OH2333
Licking	OH1986
Licking	OH1377
London	OH0824
Magnetic Springs	OH2434
Marengo	OH2171
Marion	OH2705
Martinsburg	OH2756
Marysville	OH0758
McGuffey	OH1722

Milford Center	OH1224
Millersport	OH0848
Monroe	OH2315
Monroe	OH2331
Monroe	OH1686
Montgomery	OH2407
Mount Gilead	OH0163
Mount Sterling	OH0905
Mount Vernon	OH0082
Mount Victory	OH1559
New Bloomington	OH2168
New Concord	OH0104
New Lexington	OH0315
North Lewisburg	OH1560
North Robinson	OH1343
Norwich	OH2177
Oak Run	OH0830
Orient	OH1546
Ostrander	OH1898
Paris	OH0759
Patterson	OH2161
Perry	OH2405
Philo	OH0096
Pickaway	OH0448
Pike	OH2338
Plain	OH1145
Plainfield	OH2243
Pleasant	OH2327
Pleasant	OH2435
Pleasant	OH2291
Pleasantville	OH1226
Polk	OH0875
Prospect	OH1221
Prospect	OH1239
Radnor	OH2418
Reading	OH2339
Richland	OH2329
Richland	OH2402
Richwood	OH1220
Ridgeway	OH1220
Ridgeway	OH1561
Roseville	OH0095
Rush	OH1563
Rushcreek	OH2403
Rushcreek	OH1389
Rushville	OH1332
Rushsylvania	OH2163
Sandusky	OH0876
Somerford	OH0829
Somerset	OH0829
Sonora	OH2176
South Bloomfield	OH0982

Sparta	OH2174
Springfield	OH0157
Springfield	OH1808
St. Albans	OH2332
Stoutsville	OH1138
Sugar Grove	OH0943
Sunbury	OH0671
Taylor	OH1899
Thompson	OH1223
Thorn	OH1383
Thornville	OH1384
Thurston	OH1227
Trenton	OH1816
Union	OH1225
Union	OH2111
Union	OH0828
Union	OH1851
Unionville Center	OH1900
Utica	OH1031
Valley Hi	OH2164
Vernon	OH2470
Waldo	OH1489
Walnut	OH1605
Walnut	OH0983
Washington	OH1809
Washington	OH0447
Wayne	OH2119
Wayne	OH0159
Wayne	OH2588
West Jefferson	OH0825
West Lafayette	OH1501
West Mansfield	OH1544
West Rushville	OH1333
Wharton	OH2179
Whetstone	OH0477
York	OH2182
Zane	OH1564

ATTACHMENT B

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
Ada	OH0085	26.32%	1783	469.27
Adamsville	OH2414	49.50%	46	22.77
Alexandria	OH1378	51.30%	29	14.88
Alger	OH0086	32.06%	371	118.96
Ashley	OH1535	38.89%	469	182.39
Ashville	OH0980	26.87%	1243	334.02
Athens (City)	OH0029,	16.02%	6271	1004.86
Baltimore	OH0847	28.78%	1159	333.51
Belle Center	OH1539	30.19%	326	98.41
Berkshire	OH1687	33.97%	806	273.81
Berne	OH0405	20.67%	1836	379.55
Bremen	OH0807	42.46%	483	205.09
Bucyrus (City)	OH0054	18.46%	5559	1026.45
Bucyrus (Township)	OH0474	18.46%	317	58.53
Cardington	OH2170, OH2112	43.62%	754	328.93
Carroll	OH1049	32.48%	189	61.39
Centerburg	OH1379	52.22%	504	263.20
Chesterville	OH2173	36.50%	57	20.81
Circleville (City)	OH0311	22.07%	5378	1187.17
Circleville (Township)	OH0446	22.07%	917	202.42
Crestline	OH0032	20.81%	2070	430.80
Crooksville	OH0090	27.93%	968	270.32
Danville	OH0091	42.32%	442	187.08
Darby (Pickaway)	OH2424	36.04%	1259	453.78
Darby (Union)	OH1240	27.60%	685	189.07
Delaware	OH0513, OH0291	15.38%	9520	1463.83

Dover (Union)	OH2288	25.72%	800	205.75
Dresden	OH0058	30.94%	609	188.41
Dunkirk	OH1391	48.30%	361	174.35
Edison	OH0545	49.35%	165	81.43
Forest	OH1540	43.88%	591	259.33
Fazeysburg	OH0204	48.99%	489	239.58
Fredericktown	OH0092	36.50%	1021	372.67
Fulton	OH2172	27.56%	94	25.91
Fultonham	OH1499	36.25%	57	20.66
Galena	OH0672	33.66%	122	41.07
Galion	OH0035	16.68%	4791	799.01
Gambier	OH1987	20.62%	278	57.32
Gratitot	OH1386	35.01%	77	26.96
Green Camp	OH1488	25.72%	133	34.21
Greenfield	OH0408	21.26%	1811	385.08
Groveport	OH0842	15.64%	1575	246.32
Harrisburg	OH0907	31.60%	134	42.34
Harrison (Licking)	OH1381	23.18%	2227	516.18
Hartford	OH1815	47.06%	149	70.12
Hocking	OH0406	19.46%	1140	221.89
Howard	OH1985	37.46%	1682	630.15
Jefferson (Crawford)	OH0873	17.84%	659	117.55
Jefferson (Logan)	OH2404	29.63%	1075	319.12
Jerome	OH1143	29.25%	1402	410.12
Johnstown	OH0694	36.19%	1396	505.25
Junction	OH0649	48.38%	295	142.73
Kirkersville	OH1191	22.79%	177	40.33
La Rue	OH1541	51.94%	308	159.97
Lancaster	OH0269	19.46%	14852	2890.80
Liberty (Crawford)	OH0476	19.84%	543	107.71
Licking	OH1986	30.63%	575	176/12
Licking	OH1377	35.98%	779	280.28
London	OH0824	25.21%	3590	904.90
Magnetic Springs	OH2434	25.72%	120	30.86
Marengo	OH2171	42.80%	114	48.80
Martinsburg	OH2756	31.50%	76	23.94

Marysville	OH0758	25.72%	5563	1430.71
McGuffey	OH1722	32.06%	207	66.37
Milford Center	OH1224	46.51%	232	107.89
Millersport	OH0848	23.52%	403	94.77
Mount Gilead	OH0163	44.62%	1291	576.06
Mount Sterling	OH0905	42.11%	780	328.49
Mount Vernon	OH0082	24.99%	6187	1546
Mount Victory	OH1559	42.04%	245	103.01
New Bloomington	OH2168	46.19%	190	87.77
New Concord	OH0104	34.65%	672	232.84
New Lexington	OH0315	26.90%	1836	493.89
North Lewisburg	OH1560	32.16%	598	192.30
North Robinson	OH1343	19.10%	82	15.66
Norwich	OH2177	49.11%	40	19.64
Orient	OH1546	31.60%	95	30.02
Ostrander	OH1898	50.17%	148	74.25
Patterson	OH2161	43.88%	54	23.70
Perry (f/k/a East Liberty)	OH2165	49.79%	377	187.71
Philo	OH0096	34.54%	284	98.09
Plain	OH1145	29.25%	1128	329.97
Plainfield	OH2243	23.01%	66	15.19
Pleasant (Fairfield)	OH2327 OH2291	19.91%	2046	407.42
Pleasantville	OH1226	32.24%	310	99.95
Polk	OH0875	16.68%	954	159.10
Prospect (Crawford)	OH1221	39.25%	469	184.06
Radnor	OH2418	18.84%	489	92.12
Richwood	OH1220	46.20%	849	392.25
Ridgeway	OH1220, OH1561	48.40%	123	59.53
Roseville	OH0095	26.08%	729	190.09
Rushville	OH1332	53.37%	90	428
Rushsylvania	OH2163	42.73%	200	85.36
Somerford	OH0829	28.64%	1096	313.94
Somerset	OH0829	48.40%	613	296.70
South Bloomfield	OH0982	26.87%	473	127.10

Sparta	OH2174	42.80%	70	29.96
Stoutsville	OH1138	46.02%	214	98.48
Sugar Grove	OH0943	48.67%	162	78.84
Sunbury	OH0671	34.20%	1016	347.45
Thompson	OH1223	48.83%	202	98.64
Thorn	OH1383	35.61%	1451	516.73
Thornville	OH1384	36.43%	282	1334
Thurston	OH1227	28.78%	203	58.42
Trenton	OH1816	33.97%	746	253.43
Union	OH0828	25.21%	514	129.56
Unionville Center	OH1900	29.25%	110	32.18
Utica	OH1031	41.93%	822	344.62
Valley Hi	OH2164	48.19%	97	46.74
Waldo	OH1489	50.00%	144	72
Walnut (f/k/a Fairfield Beach)	OH2328	32.39%	470	152.23
Walnut (Fairfield)	OH1605	31.14%	2525	786.40
Washington (Pickaway)	OH0447	24.64%	1051	258.97
Wayne	OH2119, OH0159, OH2588	27.50%	326	89.66
West Jefferson	OH0825	26.84%	1631	437.74
West Lafayette	OH1501	26.42%	909	240.12
West Mansfield	OH1544	52.86%	276	145.89
West Rushville	OH1333	53.37%	49	26.15
Wharton	OH2179	39.06%	145	56.64

*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

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COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
Alexander	OH1319	1081	198	18.32%
Athens (Township)	OH2283	8831	1101	12.47%
Bennington	OH1858	974	92	9.45%
Bowling Green	OH2335	598	155	25.92%
Brushcreek	OH2181	484	112	23.14%
Burlington	OH2334	402	85	21.14%
Cardington	OH0321	1096	106	9.67%
Claibourne	OH1222	1288	62	4.81%
Clearcreek	OH2282	1197	254	21.22%
Clinton	OH2317	2028	169	8.33%
Derby	OH904	1083	72	6.65%
Dover (Athens)	OH1142	1545	143	9.26%
Etna	OH1380	1991	370	18.58%
Gilead	OH2413	2282	243	10.65%
Hale	OH1558	560	9	1.61%
Harlem	OH1886	1339	30	2.24%
Harrison (Pickaway)	OH0981	2470	85	3.44%
Jackson (Allen)	OH2770	1074	180	16.76%
Jackson (Crawford)	OH1070	2223	179	8.05%
Jackson (Hardin)	OH2401	844	15	1.78%
Kingston	OH1885	537	125	23.28%
Liberty (Fairfield)	OH1390	2697	198	7.34%
Liberty (Hardin)	OH2632	2392	138	5.77%
Liberty (Licking)	OH2333	623	85	13.64%
Marion (Licking)	OH2705	961	1	0.10%
Monroe (Knox)	OH2315 OH2331	748	157	20.99%
Monroe (Licking)	OH1686	2144	110	5.13%

Montgomery	OH2407	899	80	8.90%
Oak Run	OH0830	160	14	8.75%
Paris	OH0759	6051	220	3.64%
Perry (Logan)	OH2405	867	12	1.38%
Pickaway	OH0448	672	160	23.81%
Pike	OH2338	2472	142	5.74%
Pleasant (Hardin)	OH2435	3519	270	7.67%
Prospect	OH1239	835	151	18.08%
Reading	OH2339	1467	69	4.70%
Richland (Fairfield)	OH2329	667	147	22.04%
Richland (Logan)	OH2402	967	10	1.03%
Rush	OH1563	994	14	1.41%
Rushcreek (Logan)	OH2403	764	53	6.94%
Rushcreek (Fairfield)	OH1389	1295	37	2.86%
Sandusky	OH0876	320	69	21.56%
Springfield	OH0157, OH1808	3845	17	0.44%
St. Albans	OH2332	747	126	16.87%
Taylor	OH1899	489	94	19.22%
Union (Knox)	OH2111	907	51	7.71%
Union (Muskingum)	OH1851	1282	21	1.64%
Union (Union)	OH1225	571	44	7.71%
Vernon	OH2470	292	24	8.22%
Walnut (Pickaway)	OH0983	865	247	28.55%
Washington (Morrow)	OH1809	445	131	29.44%
Whetstone	OH0477	873	140	16.04%
York	OH2182	349	91	26.07%
Zane	OH1564	354	15	4.24%